

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES

v.

11-CR-06

BRIAN MAHONEY

MOTION TO DETERMINE STATUS OF COUNSEL

Andrew R. Schulman, Esq., counsel for defendant Brian Mahoney, moves this court to determine the status of counsel.

Counsel is aware that the question of Mr. Mahoney's competency to stand trial, as well as his competency to waive counsel and proceed *pro se* is presently under advisement.

Nonetheless, out of an abundance of caution, counsel now informs the court that Mr. Mahoney has **instructed** counsel to serve only as stand-by counsel. Mr. Mahoney has further instructed counsel that he intends to represent himself *pro se* at the upcoming jury trial. These instructions were provided to counsel during two face to face meetings, on different days, and in two letters that were written on yet different days. Thus, on four separate occasions Mr. Mahoney has unambiguously and indelibly told counsel that he does not want counsel to speak for him at trial or to otherwise directly litigate any issue at trial.

Mr. Mahoney's request to proceed *pro se* with stand-by counsel is not new. However, undersigned counsel was only recently appointed. Therefore, the court should be made aware that the issue has not abated in light of the fact that undersigned counsel has been added to the case.

* * *

If Mr. Mahoney is found competent to stand trial, he requests a personal colloquy with the court, without the mediation of counsel, on the question of whether he has a right to proceed

pro se, consistent with Faretta v. California, 95 S.Ct. 2525 (1975) and Indiana v. Edwards, 128 S.Ct. 2379 (2008).

Mr. Mahoney also wishes the court to keep in mind the fact that both psychiatrists who examined him, as well as both of his present defense counsel, believe him to be an intelligent man. On earlier occasions Mr. Mahoney informed the court that he took college level classes in law and is generally able to locate and understand caselaw. Indeed, undersigned counsel does not believe that either Mr. Mahoney's intelligence or his verbal reasoning skills were ever at issue with respect to his competency to stand trial.

WHEREFORE, undersigned counsel requests this court to determine the status of counsel at the upcoming jury trial.

Respectfully submitted,

April 26, 2012

/s/ Andrew R. Schuman,
Andrew R. Schulman, Esq.
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CERTIFICATE OF SERVICE

I, Andrew R. Schulman, hereby certify that I have mailed a copy of this appearance to all counsel of record on April 26, 2012 via the Court's ECF facilities.

/s/Andrew R. Schulman,
Andrew R. Schulman